

*Exhibit "A"*

THIS AGREEMENT, made this 9th day of October, 1970, by and between JOHN V. FARRELL and FRANK LENCI, individuals of Seattle, Washington, dba FARRELL-LENCI hereinafter called the "Shipper", party of the first part, and OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY and its Lessee, UNION PACIFIC RAILROAD COMPANY, BURLINGTON NORTHERN INC. and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, all corporations, hereinafter collectively called "Railway Companies", parties of the second part,

W I T N E S S E T H:

. WHEREAS, the Shipper desires the Railway Companies to make a turnout connection from their track in East Marginal Way, Seattle, in King County, Washington, to connect with a spur track constructed or to be constructed by the Shipper; such spur track to be approximately 466 feet in length, located as shown by pink line on the blueprint map marked Exhibit "A" hereto attached, and hereby made a part hereof and such spur track connection to be located as shown by yellow line on said map; and

WHEREAS, the Shipper desires said spur track to be operated by the Railway Companies,

NOW, THEREFORE, in consideration of the advantages to accrue to the Shipper in the operation of said spur track by the Railway Companies, the parties hereto agree as follows:

1. The Shipper at its own expense agrees to construct and maintain the proposed spur track upon the location indicated by pink line on blueprint map Exhibit "A" and to construct the

same or cause the same to be constructed and maintained so as to permit the safe operation thereon and thereover by trains, motive power, equipment and loads of the Railway Companies. The construction and maintenance thereof shall meet with the requirements and be subject to the approval of a Superintendent of the Railway Companies designated by them.

2. The Railway Companies shall be privileged to operate upon and over said spur track and any extension thereof in the switching and movement of cars, motive power and equipment for the benefit of the Shipper, or any other person or industry that can be conveniently served by said spur track or any extension thereof, and shall have the right to use the track for railway purposes when it can be so used without detriment to the Shipper.

3. No building, platform or other structure shall be erected or maintained and no material or obstruction of any kind or character shall be placed, piled, stored, stacked or maintained closer than eight (8) feet six (6) inches to the center line of the track; PROVIDED, however, that in the case of platforms not higher than four (4) feet above the top of the rail a minimum clearance of seven (7) feet three (3) inches from the center line of the track will be permitted; and PROVIDED further that along and adjacent to, and for one car length beyond, all portions of the track having a curvature greater than ten (10) degrees the clearances hereinbefore provided shall, with reference to platforms four (4) feet or less in height, be increased horizontally

six (6) inches, and with reference to all buildings, platforms, structures and other obstructions greater than four (4) feet in height, shall be increased horizontally one (1) foot; and PROVIDED further that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 3, then the Shipper shall strictly comply with such statute or order. All doors, windows or gates shall be of the sliding type or shall open toward the inside of the building or enclosure when such building or enclosure is so located that the said doors, windows or gates, if opening outward, would, when opened, impair the clearances in this section prescribed.

The Shipper shall not locate or permit the location or erection of any beams, pipes, wires or other obstructions over or under the track without the written consent of the Railway Companies.

4. The Railway Companies shall be privileged to discontinue operation of said spur track and to remove said turnout connection in the event of any of the following contingencies, viz:

- (a) The Shipper ceases for a continuous period of one year the doing of business in an active and substantial way at the industry or establishment served.
- (b) The Railway Companies determine that the amount of business done upon such track be insufficient to justify the continued operation of the same by the Railway Companies.
- (c) The Shipper shall fail to keep and perform any obligation or stipulation stated in or resulting under this contract.
- (d) The Railway Companies shall find it necessary or desirable, or be required by law or ordinance or police regulation, or by changed conditions, to elevate or depress or other-

- (e) Whenever any other carrier shall be permitted, without the consent of the Railway Companies, to operate on said track.
- (f) If the Shipper fails to maintain said spur track in reasonably safe condition.

[illegible]

6. It is understood that the movement of railroad locomotives involves some risk of fire, and the Shipper assumes all responsibility for and agrees to indemnify the Railway Companies and each of them against loss or damage to property of the Shipper or to property upon its premises, regardless of the negligence of the Railway Companies or any of them, arising from fire caused by locomotives operated by the Railway Companies or any of them on the said spur track, or in its vicinity, for the purpose of serving the Shipper, except to the premises of the Railway Companies and to rolling stock belonging to the Railway Companies or to others, and to shipments in the course of transportation.

The Shipper also agrees to indemnify and hold harmless the Railway Companies and each of them for loss, damage or injury from any act or omission of the Shipper, its employes or agents, to the person or property of the parties hereto and their employes and agents, and to the person or property of any other person or corporation, while on or about the said spur track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of the parties hereto (or of any two or more of them if there be more than two), it shall be borne equally by the parties at fault.

7. Subject to the foregoing terms and conditions, the Railway Companies agree to construct, maintain and operate said turnout connection, and to connect the same with the said spur

track of the Shipper, PROVIDED, however, that the Railway Companies shall not be obligated to operate the said turnout or spur track if they shall be prevented or hindered from so doing by acts of God, public authority, strikes, riots, labor disputes, or by any cause beyond their control.

This contract is made in full contemplation of all applicable restrictive orders and regulations of the United States Government, now or hereinafter in effect, and accordingly it is expressly conditioned upon the ability of the Railway Companies to furnish labor and materials, and to secure any necessary authority to perform the work.

8. The terms and provisions of this agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

9. Permit UP No. 15163 approved by the City of Seattle Board of Public Works on July 30, 1969 (which Permit is hereby made a part hereof by reference), authorized the construction, maintenance and operation of the track in First Avenue South; and Industry agrees to reimburse the Railway Companies for any and all expense incurred by the Railway Companies in complying with requirements of said Permit.

10. This agreement shall be considered effective from June 10, 1969.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in quadruplicate the day and year first above written.

Witness:

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John V. Farrell

Witness:

\_\_\_\_\_

Frank Lenci

Doing Business As FARRELL-LENCI

Attest:

OREGON-WASHINGTON RAILROAD &  
NAVIGATION COMPANY

UNION PACIFIC RAILROAD COMPANY

\_\_\_\_\_

Assistant Secretary

By \_\_\_\_\_

President

Attest:

BURLINGTON NORTHERN INC.

\_\_\_\_\_

Secretary

By \_\_\_\_\_

Vice President

Attest:

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY

\_\_\_\_\_

Secretary

By \_\_\_\_\_

Vice President